

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PERFECTO GARCIA,

Plaintiff,

- against -

WILLIAM BADYNA and SHAGGY'S
ORIGINAL CHEESESTEAK,

Defendants.

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ROSLYNN R. MAUSKOPF, United States District Judge.

Plaintiff Perfecto Garcia ("Garcia") has brought this action against defendants William Badyna a/k/a Will House ("Badyna") and Shaggy's Original Cheesesteak ("Shaggy's") seeking, *inter alia*, unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act and the New York Labor Law. By motion filed on October 30, 2013, Garcia moved for default judgment. (Doc. No. 11.) By Order entered on October 31, 2013, the matter was referred to the assigned Magistrate Judge, the Honorable Cheryl L. Pollak, to determine both liability and damages, and to issue a Report and Recommendation ("R&R").¹

On September 4, 2014, Judge Pollak issued an R&R recommending that default judgment be entered against both defendants jointly and severally, and awarding Garcia damages. (Doc. No. 33.) That same day, pursuant to Judge Pollak's order, the Clerk of Court docketed the R&R thus providing notice to defendants, and in addition, mailed each defendant a copy of the R&R and noted the mailings on the docket. Judge Pollak also reminded the parties that, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, any objection to the R&R was due within

¹ The case was originally assigned to District Court Judge Frederic Block, who referred the matter to Magistrate Judge Pollak. The case was subsequently reassigned from Judge Block to the undersigned.

MEMORANDUM AND ORDER
ADOPTING REPORT AND
RECOMMENDATION
13-CV-4021 (RRM) (CLP)

fourteen days of its receipt. Taking into account an estimated three days for delivery of the mailings, any objections by defendants were due no later than September 22, 2014. To date, no party has filed any objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed the R&R for clear error and, finding none, concurs with it. *See, e.g., Covey v. Simonton*, F. Supp. 2d 224, 226 (E.D.N.Y. 2007). Accordingly, it is hereby ORDERED that the R&R is adopted in its entirety.

As such, the Court hereby Orders the Clerk of Court to enter a Default Judgment in favor of plaintiff Perfecto Garcia against defendants William Badyna and Shaggy's Original Cheesesteak, jointly and severally, in the total amount of \$63,470.25. That amount consists of the following: \$4,964 in unpaid minimum wages; \$10,910.50 in unpaid overtime; \$31,749 in liquidated damages; \$2,740.50 in unpaid "spread of hours" wages; \$2,500 for failure to provide statements required under New York law; \$10,092 in attorneys' fees; and \$514.25 in costs.

The Clerk is directed to mail copies of this Order and the accompanying Judgment to each defendant. Moreover, upon entering the Judgment, the Clerk is directed to terminate the pending motions and R&R (Doc. Nos. 11, 13, 33), and to close the case.

SO ORDERED

Dated: Brooklyn, New York
September 23, 2014

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge